

## Office of the Secretary of Defense

## § 48.406

section, and § 48.406, regardless of future pay increases or decreases.

### § 48.402 Effective date of reduction.

The effective date of reduction in retired pay will be the effective date of retirement with pay. The reduction in retired pay will be terminated on the date the member ceases to be entitled to retired pay or on the first day of the month following that in which there is no eligible beneficiary (for exception to this rule see § 48.604).

### § 48.403 Payment of nonwithheld reduction of retired pay.

(a) A member of a uniformed service who is entitled to retired pay and has made an election shall, during any period in which he is not receiving retired pay (including periods of active duty), deposit the amount which would have been withheld from his retired pay had he been receiving that pay.

(b) Such deposit will be payable to Treasurer of the United States and shall be forwarded monthly to the disbursing office which would normally pay the member his retired pay.

(c) The disbursing office will in all cases inform the member of the amount to be deposited and when such deposits are to be made.

(d) In the event deposits are not made within 30 days of the due date, the disbursing office will inform the member concerned that he is delinquent from such due date and thereafter his designated beneficiaries will not be eligible for the annuity provided under the Plan until the arrears have been paid. The notification of delinquency will advise the member that 15 additional days have been granted to him in which to remit his deposit, and that if the arrears are not deposited within that period, the member will be charged interest to include the first day of delinquency. In no case will the expiration date of the 15 days exceed a date later than 45 days from the date the deposit was due. The interest will be computed monthly and the rate will be that used in computing the cost tables in effect on the date of the member's retirement. If such member later becomes in receipt of retired pay, any arrears with compound interest will be withheld.

### § 48.404 Ages to be used.

Ages to be used for calculating reductions of retired pay will be the ages of the member and his eligible dependents on their nearest birth dates as of the date of the member's retirement.

### § 48.405 Action upon removal from temporary disability retired list.

(a) Any member on the temporary disability retired list established pursuant to title 10, United States Code, chapter 61, who has elected to receive reduced retired pay in order to provide one or more of the annuities specified in the Plan, and who is subsequently removed from the list due to any reason other than permanent retirement, shall have refunded to him a sum which represents the difference between the amount by which his retired pay has been reduced and the cost of an amount of term insurance which is equal to the protection provided his dependents during the period he was on the temporary disability retired list.

(b) If the member concerned is returned to active duty, his election as previously made will continue or he may change or revoke the election as provided in § 48.204.

(c) Time creditable for the purpose of the two year interval required to make a change, revocation or new election valid includes service before, during, and after temporary disability retirement. (See §§ 48.203 and 48.204 and Comptroller Decision B-144158, Dec. 23, 1960.) Active duty after removal from a temporary disability retired list is a necessity in such a case.

### § 48.406 Withdrawal and reduction of percentage or amount of participation.

A retired member who is participating in the Plan may revoke his election and withdraw from participation, or he may reduce the amount of the survivor annuity; however, an approved withdrawal or reduction will not be effective earlier than the first day of the seventh month beginning after the date his application is received by the Finance Center controlling his pay record. (For special rules covering participating members retired before Aug. 13, 1968, without option 4, see § 48.604.)

## **§ 48.501**

No application for reduction will be approved which requests a change in options. A request to reduce an annuity or to withdraw from the Plan is irrevocable, and a retired member who withdraws may never again participate in the Plan. Approval of a request for a reduction will not be made when such reduction results in an annuity of less than 12½ per centum of the member's retired pay or less than a \$25 monthly annuity. The new cost, after such reduction in survivor annuity, will be computed from the applicable cost table at the time of retirement. No amounts by which a member's retired pay is reduced may be refunded to, or credited on behalf of, the member by virtue of an application made by him under this section.

### **Subpart E—Annuity**

#### **§ 48.501 General information.**

Except as provided in § 48.506(a), no annuity payable under the Plan shall be assignable, or subject to execution, levy, attachment, garnishment, or other legal process. Annuities payable under this Plan shall be in addition to any pensions or other payments to which the beneficiaries may now or hereafter be entitled under other provisions of law (except as provided in § 48.507), and may not be considered as income under any law administered by the Veterans Administration, except for the purpose of title 38 U.S. Code, section 415(g) and chapter 15.

#### **§ 48.502 Effective date of annuity.**

All annuities payable under this Plan except those payable to beneficiaries described in § 48.102(e)(5) shall accrue from the first day of the month in which the retired member dies and shall be due and payable not later than the 15th day of each month following that month and in equal monthly installments thereafter, except that no annuity shall accrue or be paid for the month in which entitlement to that annuity terminates.

#### **§ 48.503 Claims for annuity payments.**

Upon official notification of the death of a retired member who has elected under the Plan, the department concerned shall forward to the eligible

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surviving beneficiaries the necessary information and forms (DD Form 768, Application for Annuity Under Retired Serviceman's Family Protection Plan) for making application for annuity payments. Such information shall include the place to which the application should be forwarded and to which questions regarding annuity payments should be addressed.

#### **§ 48.504 Payment to children.**

(a) Annuities for a child or children will be paid to the child's guardian, or if there is no guardian, to the person(s) who has care, custody, and control of the child or children.

(b) Annuities payable to or on behalf of an eligible child as defined in § 48.102(e)(5) accrue as of the first day of the month in which—

(1) The member (upon whose retired pay the annuity is based) dies if the eligible child's 18th birthday occurs in the same or a preceding month, or

(2) The 18th birthday of an eligible child occurs if the member (upon whose retired pay the annuity is based) died in a preceding month, or

(3) A child first becomes (or again becomes) eligible, if that eligible child's 18th birthday and the death of the member (upon whose retired pay the annuity is based) both occurred in a preceding month or months. An eligible child under this paragraph might become ineligible at age 18 and again become eligible by furnishing proof of pursuit of a full time course of study or training as enumerated in § 48.102(e)(5).

#### **§ 48.505 Establishing eligibility of annuitants.**

(a) Eligibility for the annuity will be established by such evidence as may be required by the department concerned.

(b) If a child as defined in § 48.102(e)(4) is a designated annuitant, the department concerned shall require proof that the incapacity for self-support existed prior to the child's reaching age 18. Proof that continued incapacitation exists will be required every 2 years after the child passes the age of 18 years, except in a case where medical prognosis indicates recovery is impossible.

(c) If a child as defined in § 48.102(e)(5) is a designated annuitant, as specified